

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS STACY NAZAR		DEFENDANTS NCO FINANCIAL SYSTEMS, INC.			
(b) County of Residence of First Listed Plaintiff _____ (c) Attorney's (Firm Name, Address, Telephone Number and Email Address) Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888		County of Residence of First Listed Defendant _____ NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)			
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)			
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		Citizen of This State <input type="checkbox"/> 1 PTF <input type="checkbox"/> 1 DEF Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 PTF <input type="checkbox"/> 4 DEF			
<input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		Citizen of Another State <input type="checkbox"/> 2 PTF <input type="checkbox"/> 2 DEF Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 PTF <input type="checkbox"/> 5 DEF			
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF Foreign Nation <input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF			
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	FEDERAL TAX SUITS	
	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus: <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWODIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION			
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions			
V. ORIGIN (Place an "X" in One Box Only)					Appeal to District Judge from Magistrate Judgment
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation				<input type="checkbox"/> 7
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. Section 1682					
Brief description of cause: Fair Debt Collection Practices Act					
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
VIII. RELATED CASE(S)		(See instructions):	JUDGE	DOCKET NUMBER	
Explanation: <i>11-110-10</i>					
DATE	SIGNATURE OF ATTORNEY OF RECORD				

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 240 Hallord Ave, Beachwood NJ

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY:
 Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
 Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
 Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
 Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
 Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. Federal Question Cases:

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases 15 U.S.C §1692
 (Please specify)

B. Diversity Jurisdiction Cases:

- Insurance Contract and Other Contracts
- Airplane Personal Injury
- Assault, Defamation
- Marine Personal Injury
- Motor Vehicle Personal Injury
- Other Personal Injury (Please specify)

7. Products Liability

8. Products Liability — Asbestos

9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 11-16-10

Craig Thor Kimmel
 Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11-16-10

Craig Thor Kimmel
 Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Stacy Nazar

CIVIL ACTION

v.
NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

11-16-10

Date

215-540-888

Telephone

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Attorney-at-law

877-288-2864

FAX Number

Stacy Nazar
Attorney for

Kimmel@creditLaw.com

E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

NOW COMES Plaintiff, STACY NAZAR, by and through his attorneys, KIMMEL & SILVERMAN, P.C., for his complaint against the Defendant, NCO FINANCIAL SYSTEMS, INC., Plaintiff states as follows:

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant's principal place of business is in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

- 1 4. Venue is proper pursuant to 28 U.S.C. § 1331(b)(1).
- 2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
- 3
- 4

PARTIES

5 6. Plaintiff is a natural person residing in Beachwood, New Jersey.
6
7 7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §
8
9 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

10 8. Also, Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
11 9. Defendant is a national debt collection company with corporate headquarters
located at 507 Prudential Road, Horsham, Pennsylvania, 19044.

12 10. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6),
13 and sought to collect a consumer debt from Plaintiff.

14 11. Defendant acted through its agents, employees, officers, members, directors,
heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

15 12. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute
16 that prohibits a catalog of activities in connection with the collection of debts by third parties.
17 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
18 violates its provisions, and establishes general standards of debt collector conduct, defines
19 abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions
20 of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful
21

1 and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3 13. In particular, the FDCPA broadly enumerates several practices considered
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
7 person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt
8 collector may not use any false, deceptive, or misleading representation or means in connection
9 with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use
10 unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not
12 there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct
13 which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading
14 statements in connection with the collection of a debt.

15 14. In enacting the FDCPA, the United States Congress found that "[t]here is
16 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
17 debt collectors," which "contribute to the number of personal bankruptcies, to marital instability,
18 to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress
19 additionally found existing laws and procedures for redressing debt collection injuries to be
20 inadequate to protect consumers. 15 U.S.C. § 1692b.

21 15. Congress enacted the FDCPA to regulate the collection of consumer debts by
22 debt collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action
2 to protect consumers against debt collection abuses." 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

4 16. At all pertinent times hereto, Defendant was allegedly hired to collect a consumer
5 debt allegedly owed by a third party.

7 17. Upon information and belief, the alleged debt Defendant was seeking to collect
8 arose out of transactions which were primarily for personal, family, or household purposes.

9 18. Beginning in or around October 2009 and continuing until March 2010,
10 Defendant constantly and continuously contacted Plaintiff seeking and demanding payment from
11 Plaintiff for a debt allegedly owed by a third party.

12 19. Defendant contacted Plaintiff, on average, two to three times a week in its
13 attempts to collect a debt.

14 20. In fact, on March 9, 2010, Defendant's employee, Rosanne Lynn and/or Russell
15 Smith, contacted Plaintiff twice on the same day, with no other purpose but to harass Plaintiff.

16 21. Defendant also left numerous messages on Plaintiff's answering machine advising
17 that it was a debt collector and requested Plaintiff return the phone call.

18 22. Plaintiff called the telephone numbers provided by Defendant. Plaintiff received
19 a recorded message requesting that he leave his name, telephone number, and other personal
20 information. Plaintiff was unable to personally speak with an employee or agent of Defendant.

22 23. Plaintiff has no debts that are unpaid.

23 24. Upon information and belief, Defendant is attempting to collect a debt from
24 Plaintiff, which he does not owe.

25. To date, Defendant has not provided Plaintiff with any written information advising him of the name of the original creditor, the amount owed, and his rights to dispute the debt and/or request verification.

26. As a result, Plaintiff is unaware of his rights to dispute the debt or request verification, and he has no knowledge of the underlying debt.

CONSTRUCTION OF APPLICABLE LAW

27. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

28. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

29. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for

the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained 'and experienced does not change its character, nor take away its power to deceive others less experienced.' Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F.2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

30. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Harassing, oppressing or abusing Plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.
- b. Causing Plaintiff's telephone to ring repeatedly or continuously with intent to annoy, abuse, or harass him, in violation of 15 U.S.C. § 1692d(5).
- c. Using false, deceptive, or misleading representations or means in connection with the collection of any debt, in violation of 15 U.S.C. § 1692e;
- d. Falsely representing the character, amount, or legal status of any debt, in violation of 15 U.S.C. § 1692e(2);
- e. Using unfair or unconscionable means to collect or attempt to collect any debt, in violation of 15 U.S.C. §1692f.

- f. Collecting an amount not permitted by law, in violation of 15 U.S.C. § 1692f(1);
- g. Defendant violated § 1692g(a) of the FDCPA by failing to send written notification, within 5 days after its initial communication with Plaintiff, advising Plaintiff of his right to dispute the debt or request verification of the debt; and
- h. By acting in an otherwise deceptive, unfair and unconscionable manner and failing to comply with the FDCPA.

WHEREFORE, Plaintiff, STACY NAZAR, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for each violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, STACY NAZAR, demands a jury trial in this

case.

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3 Dated: 11-16-10
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Respectfully submitted,

KIMMEL & SILVERMAN, P.C.

By: _____

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